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Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6394
DATE COMPLAINT FILED: 10/13/10
DATE OF NOTIFICATION: 10/15/10
LAST RESPONSE RECEIVED: 11/29/10
DATE ACTIVATED: 1/19/11

EXPIRATION OF SOL: 9/13/15

COMPLAINANT:

Charles M. Webster, Chair
Maine Republican Party

RESPONDENTS:

Rochelle M. Pingree
Pingree for Congress
Anne Rand, in her official capacity as treasurer
Magic Carpet Enterprises LLC
S. Donald Sussman

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 439a(c)(2)
2 U.S.C. § 441a
2 U.S.C. § 441b(a)
11 C.F.R. § 100.93(c)(2)
11 C.F.R. § 113.5(b)
11 C.F.R. § 114.2(e)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Representative Rochelle M. Pingree traveled on a private jet to and from a September 13, 2010, re-election fundraiser in violation of the ban on non-commercial campaign-related air travel by House candidates. Respondents acknowledge that Representative Pingree traveled to the fundraiser on a private jet, but assert that the travel on the jet owned by her fiancé S. Donald Sussman, through Magic Carpet Enterprises LLC, was primarily personal

1 and did not constitute the type of campaign expenditure that would violate the Federal Election
2 Campaign Act of 1971, as amended ("the Act" or "FECA").

3 Based on information in the complaint, the joint response, and publicly available
4 information, we recommend that the Commission find reason to believe that Representative
5 Pingree violated 11 C.F.R. § 100.93(c)(2) by traveling on non-commercial aircraft in connection
6 with an election for federal office, and Pingree and her authorized committee, Pingree for
7 Congress and Anne Rand, in her official capacity as treasurer ("Pingree Committee"), violated
8 2 U.S.C. § 439a(c), and 11 C.F.R. § 113.5(b) by accepting two prohibited campaign-related
9 flights on a non-commercial aircraft, and also violated either 2 U.S.C. §§ 441a(f) or 441b(a) by
10 accepting an in-kind contribution that was either in excess of applicable limits or from a
11 prohibited corporate source. We also recommend that the Commission find reason to believe
12 that S. Donald Sussman violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind
13 contribution, or that Magic Carpet Enterprises LLC and its owner, S. Donald Sussman, violated
14 2 U.S.C. § 441b(a) by making, and consenting to, an in-kind corporate contribution. An
15 investigation will be required to determine (1) the value of the flights, (2) whether other flights
16 that Representative Pingree took aboard this aircraft were for campaign-related travel, and
17 (3) whether the contributions were corporate contributions from Magic Carpet Enterprises LLC
18 or excessive personal contributions from Sussman.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Facts**

21 Representative Pingree was a candidate for re-election to Maine's First Congressional
22 District in 2010. Pingree for Congress is her authorized committee. Representative Pingree has
23 had a relationship with S. Donald Sussman since approximately 2007. In late 2010, shortly after

1 news of the flights on the private jet became public, Representative Pingree announced that she
2 and Sussman had been engaged to be married since after the 2008 election. *See*
3 [http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says_2010-09-](http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says_2010-09-26.html)
4 [26.html](http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says_2010-09-26.html), (last visited April 8, 2011). Sussman gave the maximum \$4,800 (\$2,400 x 2) election
5 cycle contribution to Representative Pingree's re-election campaign on January 26, 2009.
6 Sussman, the founder and chairman of Paloma Partners, an investment firm in Greenwich,
7 Connecticut, wholly owns Magic Carpet Enterprises LLC ("Magic Carpet"), which owns the 19-
8 seat 2007 Dassault Falcon 2000EX private jet on which Representative Pingree flew on the trips
9 at issue in this matter. *See* Complaint at 2, Joint Response at 1.

10 Pingree for Congress scheduled a re-election fundraiser for Representative Pingree at a
11 private residence in New York City on September 13, 2010, from 6:30 p.m. to 8:00 p.m. *See*
12 <http://action.chelliepingree.com/page/event/detail/houseparty/w58>, last visited February 11,
13 2011). As of August 24, 2010, over 20 individuals, including Representative Pingree's son, had
14 expressed an intention to attend the fundraiser. *Id.*

15 On the morning of the fundraiser, Monday, September 13, 2010, Representative Pingree
16 traveled with Mr. Sussman from Portland, Maine, to White Plains, New York, on the Magic
17 Carpet jet. *See* Joint Response at 1. Based on publicly available information, the charter rate for
18 a comparably-sized large corporate jet for the two flights would appear to be at least \$10,000 per
19 flight, or at least \$20,000 for both flights.¹ *See* <http://www.avchart.com/users/quotes/default.asp>.
20 After arriving in White Plains at 1:20 p.m., Representative Pingree and Sussman drove to New
21 York City, about an hour away by car. Joint Response at 1. Representative Pingree later

¹ The charter rates that we have found for a comparable aircraft (large corporate jet) vary. A lump sum charter rate ranges from \$14,116 to \$18,500 for each flight. Although there may be hourly rates for large corporate jets that are less than \$10,000 per hour, those rates appear to be subject to a minimum charge of \$10,000. The quoted rates also do not include additional fees and expenses, such as airport landing and loading charges, etc.

1 attended the fundraiser in Manhattan from approximately 6:30-8:00 p.m. After the fundraiser
2 ended, Representative Pingree and Mr. Sussman drove back to White Plains and departed on the
3 private jet to Washington, D.C. at 9:22 p.m. *Id.*

4 Respondents claim that "it is not uncommon" for Representative Pingree and Sussman
5 (who often has meetings in New York) to fly to New York together for an afternoon or evening,
6 so that they can have extra time together before Representative Pingree returns to Washington,
7 D.C. *See* Joint Response at 1. Respondents claim that Mr. Sussman had a personal meeting in
8 New York on September 13, 2010, and that he wanted Representative Pingree to attend with
9 him. *Id.* After this meeting (of unspecified duration), Representative Pingree visited with her
10 son and grandson, and later went to the fundraiser between 6:30 p.m. and 8:00 p.m. Respondents
11 argue that the primary purpose of the trip was personal and Sussman would have invited
12 Representative Pingree to accompany him irrespective of her candidacy. On this basis,
13 Respondents assert that the cost of the flights should not be considered a campaign expenditure,
14 and thus not subject to the ban on using non-commercial aircraft for House candidates engaged
15 in campaign travel.² *Id.* at 2.

16 Respondents point out that the House Committee on Standards of Official Conduct
17 ("House Ethics Committee") has opined that Representative Pingree may accept unlimited gifts
18 of transportation, including travel by private aircraft, where the donor is the fiancé of the
19 recipient. Joint Response at 6. The House Ethics Committee's approval of Representative
20 Pingree's accepting trips as gifts from Mr. Sussman, however, was based on the fact that the
21 relevant House gift ban statute, Ethics in Government Act of 1978 (5 U.S.C. app 4 § 109(16)),
22 specifically includes a fiancé as a relative to whom an exception applies. *See*

² Although the complaint alluded to multiple additional flights Representative Pingree has taken on the Magic Carpet jet, there is no information indicating whether or not she conducted campaign activities on those trips.

1 <http://ethics.house.gov>, (last visited February 3, 2011). Further, the House Ethics Committee
2 letter does not indicate any awareness that Representative Pingree would conduct campaign
3 activities during trips.³ See <http://ethics.house.gov>, (last visited February 3, 2011).

4 Respondents do not argue that the House Ethics Committee approval would sanction
5 Representative Pingree's travel if it constituted a campaign expenditure under the Act. Rather,
6 as discussed below, Respondents argue that by applying a 2002 Commission Advisory Opinion
7 regarding mixed-purpose travel on commercial flights, which pre-dates the current ban on non-
8 commercial air travel by House candidates, it is possible to conclude that Representative Pingree
9 traveled to New York City and attended her campaign fundraiser without ever making a
10 prohibited campaign expenditure for the non-commercial flight. See AO 2002-5 (Hutchinson).

11 B. Legal Analysis

12 The Honest Leadership and Open Government Act of 2007 ("HLOGA"), which became
13 effective on September 14, 2007, amended FECA to prohibit House candidates from making any
14 expenditure for non-commercial aircraft travel. See 2 U.S.C. § 439a(c)(2). The Commission
15 promulgated implementing regulations that became effective on January 6, 2010. See
16 Explanation and Justification, 74 Fed. Reg. 63951 (December 7, 2009). The regulations provide
17 that House candidates are prohibited from traveling on non-commercial aircraft on behalf of their
18 own campaigns, and also from accepting an in-kind contribution in the form of non-commercial
19 air travel. See 11 C.F.R. §§ 100.93(c)(2) and 113.5(b). The HLOGA prohibition on non-
20 commercial air travel applies to any House candidate who is a "campaign traveler," which
21 includes, "any candidate traveling in connection with an election for Federal office or any

³ The House Ethics Committee generally recommends that Representatives also seek guidance from the Commission regarding non-commercial travel.

individual traveling in connection with an election for Federal office on behalf of a candidate or political committee.” 11 C.F.R. §§ 100.93(a)(3)(i)(A).

The HLOGA prohibition, however, does not apply to non-commercial aircraft owned or leased by the candidate or an immediate family member.⁴ 2 U.S.C. § 439a(3)(A); 11 C.F.R. § 113.5(c)(1). For the purposes of this exception, however, an immediate family member is limited to a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law. 2 U.S.C. § 439a(3)(B); 11 C.F.R. §§ 100.93(g)(4) and 113.5(c)(3). A “fiancé” is not included on the statutory list of immediate family members allowed to provide non-commercial flights to a House candidate. *Id.* Although Respondents note that the House Ethics Committee Opinion allows Representative Pingree to accept unlimited personal gifts of transportation from her fiancé, they do not argue that the Pingree-Sussman relationship qualifies for the immediate family member exception to the HLOGA ban on non-commercial air travel.

The Act and Commission regulations prohibit corporations from making any contribution, and corporate officers from consenting to any corporate contribution, in connection with a federal election, and prohibit candidates and committees from accepting such contributions. 2 U.S.C. § 441b and 11 C.F.R. § 114.2(e). “Contribution” includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8).

The Act also prohibits any person from making contributions to any candidate or the candidate’s authorized committee with respect to a federal election which, in the aggregate, exceed \$2,400 in the 2010 election cycle. 2 U.S.C. § 441a(a)(1)(A). Finally, the Act provides

⁴ The prohibition also does not apply to travel on federal or state government-operated aircraft. See 2 U.S.C. § 439a(2)(B); 11 C.F.R. §§ 100.93(e) and 113.5(b)(2).

1 that no candidate, officer, or employee of a political committee shall knowingly accept any
2 contribution that exceeds the contribution limits. 2 U.S.C. § 441a(f).

3 **1. Representative Pingree violated the Act by flying on a**
4 **non-commercial aircraft in connection with a federal election**

5
6 Representative Pingree attended a fundraiser for her re-election campaign in New York
7 City on September 13, 2010. Because this fundraiser was "in connection with an election for
8 federal office" and on behalf of her candidacy, Representative Pingree was a covered "campaign
9 traveler" while traveling to and from New York City. 11 C.F.R. § 100.93(a)(3)(i)(A). Given
10 that Representative Pingree flew on a non-commercial aircraft to attend her re-election
11 fundraiser, she violated 11 C.F.R. § 100.93(c)(2), and Pingree and her Committee violated
12 2 U.S.C. § 439a(c)(2) and 11 C.F.R. § 113.5(b) by accepting a prohibited in-kind contribution in
13 the form of non-commercial aircraft travel in connection with her campaign for re-election to the
14 House of Representatives.

15 In response to the complaint's allegation that Representative Pingree was a "campaign
16 traveler," Respondents argue that there was no "campaign expenditure" for the trip, because
17 1) Representative Pingree would have been offered the trip on the Magic Carpet jet for personal
18 business without regard to her status as a candidate, and 2) there was no additional cost beyond
19 what would have been expended if her trip had been limited to personal business. See Joint
20 Response at 2, 5. Respondents point to Advisory Opinion 2002-5 (Hutchinson) to suggest that,
21 because that candidate was under no obligation to reimburse her employer for the cost of a
22 permissible commercial flight on a mixed-purpose trip, the Commission should conclude that
23 there was no covered "campaign expenditure" for the non-commercial flights Representative
24 Pingree took to and from her fundraiser. See Joint Response at 4-6.

1 In AO 2002-5, a mayor, who also was a candidate for federal office, traveled to
2 Washington, D.C., for two days of official city business, four days of personal activities, and two
3 additional days engaged in federal campaign activity. The Commission analyzed the apparent
4 conflict between its since-modified travel allocation regulations at 11 C.F.R. § 106.3(b)(3)
5 (which then treated all expenses of a stop in mixed-purpose travel as campaign-related where a
6 candidate conducted any non-incidental campaign-related activity), and the personal use
7 regulations at 11 C.F.R. § 113.1(g) (which treated only the incremental expenses of the trip as
8 campaign-related activities, and thus expenditures under the Act). While the Commission
9 concluded that the mayor's federal campaign activity in Washington, D.C., was too significant to
10 be deemed incidental, it gave priority to the provisions of Section 113.1(g) in finding that the
11 mayor's federal committee was only required to pay for the additional costs related to the
12 campaign activity. Because the mayor's commercial airfare for the trip to Washington, D.C.,
13 which had been pre-scheduled for official city business, would have been incurred regardless of
14 whether there had been campaign activity, the candidate's campaign was not required to
15 reimburse the city for the cost of the commercial airfare. *Id.* Respondents argue that the
16 Commission's opinion in AO 2002-5 means that the cost of a candidate's airfare on a mixed-
17 purpose trip that was paid by a third party irrespective of the traveler's federal candidacy does
18 not constitute a campaign expenditure, and they argue that the same conclusion should apply to
19 the cost of Representative Pingree's non-commercial air travel. Joint Response at 5-6.

20 The Hutchinson advisory opinion, which dealt with allocation of permissible travel costs
21 prior to the passage of HLOGA, is inapplicable to this situation. HLOGA prohibits the use of
22 non-commercial flights by House candidates engaged in campaign travel. Both HLOGA and the
23 Commission regulations create a bright-line test for any travel in connection with the candidate's

1 If Magic Carpet is a single member company that does not elect to be treated as a
2 corporation by the Internal Revenue Service, we recommend that the Commission find reason to
3 believe S. Donald Sussman violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind
4 contribution to Representative Pingree's campaign. See 11 C.F.R. § 110.1(g)(4) (contribution by
5 single member non-corporate LLC attributed only to single member). As noted above, Sussman
6 had already contributed the maximum allowable amount to Representative Pingree's campaign at
7 the time of the flights at issue. Given the estimated value of the flights, under the alternative
8 theory, we recommend that the Commission find reason to believe that Representative Pingree,
9 and Pingree for Congress and Anne Rand, in her official capacity as treasurer, violated 2 U.S.C.
10 § 441a(f) by knowingly accepting an excessive in-kind contribution.

11 **III. SCOPE OF INVESTIGATION**

12 An investigation is required to determine 1) the value of the flights, 2) whether
13 Representative Pingree made any other flights on the Magic Carpet jet in connection with her
14 2010 re-election campaign, and 3) whether the in-kind contribution of air travel is a prohibited
15 corporate contribution from Magic Carpet or an excessive personal contribution from Sussman.
16 Although we hope to obtain the required information through informal discovery, we
17 recommend that the Commission authorize the use of compulsory process.

18 **IV. RECOMMENDATIONS**

- 19 1. Find reason to believe that Rochelle M. Pingree violated 2 U.S.C.
20 § 439a(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b).
- 21 2. Find reason to believe that Rochelle M. Pingree violated 2 U.S.C. § 441b(a) or,
22 alternatively, 2 U.S.C. § 441a(f).
- 23 3. Find reason to believe that Pingree for Congress and Anne Rand, in her official
24 capacity as treasurer, violated 2 U.S.C. § 439a(c)(2) and 11 C.F.R. § 113.5(b).
- 25
26
27

4. Find reason to believe that Pingree for Congress and Anne Rand, in her official capacity as treasurer, violated 2 U.S.C. § 441b(a) or, alternatively, 2 U.S.C. § 441a(f).
5. Find reason to believe that Magic Carpet Enterprises LLC violated 2 U.S.C. § 441b(a) and that S. Donald Sussman violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(e) or, alternatively,
6. Find reason to believe that S. Donald Sussman violated 2 U.S.C. § 441a(a)(1)(A).
7. Approve the attached Factual and Legal Analyses.
8. Authorize the use of compulsory process.
9. Approve the appropriate letters.

Christopher Hughey
Acting General Counsel

4/19/11
Date

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